



State of California—Health and Human Services Agency
Department of Health Services



Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Public Notification Requirements for Drinking Water Regulation
Violations, **R-59-01**

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation control number, **R-59-01**:

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on October 11, 2005, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-59-01" in the subject line to facilitate timely identification and review of the comment), or

4. By using the "Making Comments" link to the Department website at <http://www.dhs.ca.gov/regulation/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

TO OBTAIN THE REGULATIONS REFERENCED IN THIS NOTICE:

1. Materials regarding these regulations (including this public notice, the regulation text, and the Initial Statement of Reasons) that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/> and then clicking on the "Select DHS regulations" button.

2. In order to request a copy of this regulation package be mailed to you, please call (916) 440-7695 or email regulation@dhs.ca.gov.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Michael G. McKibben, P.E., Standards and Technology Unit, Drinking Water Program at (619) 525-4023.

All other inquiries concerning the action described in this notice may be directed to Don Lee of the Office of Regulations at (916) 440-7673, or to the designated backup contact person, Linda Tutor, at (916) 440-7697.

Upon request, this document will be made available in Braille, large print, and audiocassette or computer disk. To obtain a copy in one of these alternate formats, please call or write: Don Lee, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7673 and/or California Relay at 711/1-800-735-2929.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (USEPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Water Act (Sections 116270-116751, Health and Safety Code [H&S Code]). California has been granted "primacy" for the enforcement of the Federal Act. In order to receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations.

In accordance with federal regulations, California requires public water systems to sample their sources and have the samples analyzed for inorganic and organic substances to determine compliance with drinking water standards, also known as maximum contaminant levels (MCLs). Primary MCLs are based on health protection,

technical feasibility, and costs. Secondary MCLs are based on consumer acceptance, using parameters such as odor, taste, and appearance as measures of acceptability. The water supplier must notify the Department and the public when a primary or secondary MCL has been violated and take appropriate action. Public water systems must also sample for a number of “unregulated” chemicals, as set forth in regulation. When MCLs are not the most feasible or appropriate approach to minimizing the level of a contaminant in drinking water, regulations are adopted that use “treatment techniques” to control the levels of the contaminant instead. Public water systems that do not comply with “treatment technique” requirements must also notify the public. The proposed regulations are revisions to the public notification requirements in the existing regulations that govern the form, manner, frequency, and content of public notices.

On May 4, 2000, USEPA promulgated revisions to the public notification requirements [Federal Register 65(87), 25982-26049] that California must adopt to maintain primacy.

This proposed regulation package incorporates all the required revisions. In order to adopt the revisions to the public notification requirements in conformance with the federal rule, the Department proposes the following changes to Title 22, California Code of Regulations:

- Adopt new sections 64401.71, 64401.72, and 64401.73 to establish definitions for the three tiers of public notices for clarification;
- Amend sections 64426.1, 64432.1, 64451, 64453, 64482, 64483, and 64666 in order to revise citations;
- Amend section 64451 to update nomenclature and require water systems to certify to the Department when specified public notices have been issued. Section 64451 would also be redesignated as new section 64469;
- Amend section 64453 to specify the retention period for copies of public notices. Section 64453 would also be redesignated as new section 64470;
- Renumber article 18 (Records and Reporting) and article 19 (Notification of the Department and Water Consumers) in chapter 15 to be articles 19 and 18 respectively to change the order;
- Repeal sections 64463.2, 64464.1, 64464.3, 64464.6, 64465, 64466, 64467, 64467.5, 64468.1, 64468.2, 64468.3, 64468.4, 64469, and 64470;
- Adopt new sections 64463 through 64466 to incorporate the new federal requirements; and
- Amend section 64481 to include new federal definitions and remove appendices 64481-C, D, E, F, and G that would be relocated to the new public notification section 64465 in conformance with the federal revisions.

In addition, there would be two sections [64466 and 64481(c)(2)] that would incorporate federal regulations by reference: Federal Register 64(180), p 50556-50620, September 17, 1999.

The net effect of the proposed changes would be:

- Notices organized into three tiers for clarity;
- Public notices would contain the same health effects language that is to be included in Consumer Confidence Reports;
- Notices would be required under a broader definition of waterborne disease outbreaks and emergencies and for failure to collect a confirmation sample for nitrate;
- Water systems would be required to notify owners/operators of consecutive systems;
- Distribution of a violation notice may be limited to the affected portion of the distribution system, if approved by the Department;
- A certification for initial and repeat notices must be submitted to the Department within 10 days;
- Water systems would need to consult with the Department related to notices of possible acute health risks for turbidity limit exceedances;
- Notice of acute violations would be required within 24 hours instead of the existing 72;
- Existing requirement for newspaper notice within 14 days would be changed to within 30 to 90 days, depending on the Department review;
- Repeat notice frequency may be extended to annual, if approved by the Department;
- Availability of unregulated chemical monitoring results required to be noticed;
- Water systems must provide new customers with copies of all notices for outstanding violations or situations;
- Additional details required in notice;
- Standard language for monitoring and testing procedure violations; and
- To inform non-English speaking consumers about notice import, a sentence in the appropriate language is to be included in the notice under the same circumstances as specified in the Consumer Confidence Report requirements.

Adoption of these requirements would satisfy the mandate in section 116350, H&S Code, and federal primacy requirements related to the adoption of regulations at least as stringent as the federal. However, there are a few differences between the federal and proposed state requirements:

The federal rule does not provide for Department review of a notice prior to distribution to the public; the Department's experience is that such a review is frequently warranted to ensure that the notice is comprehensive and does not inadvertently confuse or mislead the public. This is particularly true for small systems. Therefore, the proposed regulations require that a system submit draft notices to the Department for review and approval unless otherwise directed.

- 40 CFR section 141.208(a) requires that a system distribute a special notice when the federal secondary MCL of 2 mg/L for fluoride is exceeded. Since California has a primary MCL of 2 mg/L for fluoride, a tier 1 notice would be

issued and, therefore, this requirement has not been included in the proposed regulations.

- 40 CFR sections 141.209(a) and (b) specify the requirements for a notice and posting for a nitrate MCL exceedance allowed by the state; since the Department does not allow such exceedances, the associated requirements are not applicable and have not been included in the proposed regulations.
- 40 CFR section 141.210 allows the Department to give the public notice for a water system; since the Department requires all water systems to give their own notices, this provision is not applicable and has not been included in the proposed regulations.

AUTHORITY: Sections 116275, 116325, 116350, 116375 and 116450, Health and Safety Code.

REFERENCE: Sections 116270 through 116751, Health and Safety Code.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: Additional expenditures of approximately none to negligible in the current State fiscal year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Section 17500 et seq. of the Government Code because this regulation implements the Federal mandate contained in the Federal Safe Drinking Water Act.
- B. Fiscal Effect on State Government: Additional expenditures of approximately none to negligible in the current State fiscal year.
- C. Fiscal Effect on Federal Funding of State Programs: Additional expenditures of approximately none to negligible in the current State fiscal year.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The Department has concluded that any incremental costs resulting from the proposed revisions would be insignificant and there may be a small savings for a few systems when they are required to give public notice.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations will not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in this area in that there would not be any change in water system or regulatory personnel needed for compliance with the proposed requirements.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the proposed regulation will not result in the creation or elimination of water systems. The impact of these regulations will be insignificant.
3. The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any affect on expansion.

The Department has determined that the regulations would not affect small businesses. Government Code Chapter 3.5, Article 2, Section 11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. A copy of the initial statement of reasons and a copy of the text of the proposed regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the proposed regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

Other regulation changes may be scheduled for hearing at the same time appointed for public hearing on the action described in this notice. An agenda for the public hearing will be posted at the time and place of hearing designated above.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Don Lee, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7673 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten working days prior to a public hearing.

DEPARTMENT OF HEALTH SERVICES

R-59-01

Dated:

Sandra Shewry
Director